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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
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FILED

OCT 3 1 2005

Division of Consumer Affairs

By: Jonathan D. Rudolph
Deputy Attorney General
(973) 648-7819

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
Docket No.: 05-011

PETER C. HARVEY, Attorney General of
the State of New Jersey,

Petitioner,

v.

MASTER MECHANICAL
CORPORATION a/k/a MASTER
EXCAVATION MECHANICAL CORP.
and ADAM NELAJ,

Respondents.

Administrative Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at
124 Halsey Street, Fifth Floor, Newark, New Jersey, by way of Complaint states:

PARTIES AND JURISDICTION

I. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey
("Attorney General") is charged with the responsibility of enforcing the laws of the State of New
Jersey (the "State"). including the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2 et seq. (the

“CFA”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (the “Regulations”).

2. By this action, the Attorney General (“Petitioner”) seeks injunctive and other relief for violations of the CFA and relevant Regulations. Petitioner brings this action pursuant to the authority under the CFA, specifically N.J.S.A. 56:8-3.1, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

3. Respondent Master Mechanical Corporation a/k/a Master Excavation Mechanical Corp. (“Master Mechanical”) is a corporation established in the State on February 27, 2004. Upon information and belief, at all relevant times, Master Mechanical has maintained a principal place of business at 590 Bloomfield Avenue, Suite 375, Bloomfield, New Jersey 07003.

4. Upon information and belief, at all relevant times, Adam Nelaj (“Nelaj”) was the owner, member, registered agent and/or employee of Master Mechanical. Upon information and belief, at all relevant times, Nelaj has maintained a mailing address of 15 Orchard Street, Bloomfield, New Jersey 07003.

5. Master Mechanical and Nelaj are collectively referred to as “Respondents.”

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

6. Since at least February 2004, Respondents have offered and provided to consumers in the State home improvement services including, but not limited to, performing excavations and pouring or laying foundations.

Consumer Nigam

7. On or about June 20, 2004, B. N. Nigam (“Consumer Nigam”) hired Respondents to install a new copper water line which ran from the curb to his home.

8. The work to be performed by Respondents was memorialized in a contract, dated June 15, 2004 ("Nigam Contract"). The Nigam Contract also provided that Respondents would obtain a permit for the work and would ensure that the work passed inspection. Moreover, the Nigam Contract provided for a one (1) year warranty on parts and labor.

9. Upon information and belief, the Nigam Contract neither included the signature of Consumer Nigam, the business address of Master Mechanical nor the dates on which the work would commence and be completed.

10. Upon information and belief, Consumer Nigam paid \$2,200.00 for the work to be performed under the Nigam Contract.

11. Upon information and belief, Respondents performed the work on June 20, 2004.

12. Respondents failed to obtain the necessary permits prior to commencing the work as well as at any time thereafter.

13. Upon information and belief, on August 31, 2004, Consumer Nigam discovered that water pouring out from a sleeve surrounding the water line damaged newly installed carpet in his basement. Upon information and belief, Consumer Nigam immediately contacted Respondents to report the problem.

14. Upon information and belief, later that evening, Nelaj arrived at Consumer Nigam's home and inspected the pipe. Upon information and belief, Nelaj admitted that the problem was his fault because he had not blocked the sleeve ends.

15. Upon information and belief, Nelaj promised to fix the situation and pay for the damage to Consumer Nigam's basement. At that time, Nelaj attempted to apply silicone caulk around the waterline in the pipe; however, the water continued to leak from the pipe. Nelaj then represented to Consumer Nigam that he would return the following day to fix the problem.

16. Nelaj failed to return to Consumer Nigam's home to make the repairs on the following day or at any time thereafter.

17. Upon information and belief, Consumer Nigam attempted to contact Respondents by telephone and letter. Upon information and belief, Respondents failed to respond to Consumer Nigam.

Consumer Damiano

18. On or about November 8, 2004, Kathleen and Bob Damiano (collectively "Consumer Damiano") hired Respondents to install a foundation for a modular addition to their home.

19. The work to be performed by Respondents was memorialized in a contract (the "Damiano Contract"), in the amount of \$16,100.00. Consumer Damiano did not sign the Damiano Contract.

20. Upon information and belief, Consumer Damiano paid \$9,360.00 to the Respondents under the Damiano Contract.

21. The Damiano Contract provided that there would be an additional fee for all permits and bonds, implying that the Respondents would apply for them.

22. Respondents failed to apply for the requisite permits prior to starting construction as well as any time thereafter.

23. Upon information and belief, the building specifications called for a rectangular foundation 15.5 feet wide by 17.0 feet long. Upon information and belief, Respondents built a trapezoidal foundation which had short sides of 14.5 feet and 15.1 feet, and long sides of 16.83 feet and 17.0 feet. Upon information and belief, the walls were also improperly constructed in that, among other things, the tops were not level.

24. Following construction, the Randolph Township Building Inspector inspected the foundation, which failed the inspection.

25. Dissatisfied with and angry about the poor workmanship, on January 10, 2005, Consumer Damiano and Respondents entered into an agreement (the "Termination Agreement") to terminate the Damiano Contract and to provide a refund to Consumer Damiano.

26. The Termination Agreement provided that by January 10, 2005, Respondents would pay \$5,000.00 to Consumer Damiano and would provide a check, post-dated January 24, 2005, for \$1,000.00.

27. Respondents made both payments. However, when Consumer Damiano deposited the post-dated check, it was returned unpaid due to insufficient funds.

28. On February 9, 2005, Consumer Damiano sent a certified letter to Respondents advising them that the check had bounced and that they had been charged a \$25.00 bank fee.

29. To date, Respondents have failed to provide Consumer Damiano with the \$1,025.00 requested.

COUNT I

VIOLATIONS OF THE CFA BY RESPONDENTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

30. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 29 above as if more fully set forth herein.

31. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

32. In the operation of their home improvement business, Respondents have engaged in unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

33. Respondents have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Failing to complete the work specified in home improvement contracts;
- b. Failing to obtain the necessary permits before commencing work;
- c. Performing work that failed to comply with the specifications in the home improvement contract;
- d. Failing to return to consumers' homes to complete home improvement work;
- e. Accepting payment for work that Respondents never completed;
- f. Failing to provide consumers with refunds for home improvement work that Respondents never completed;
- g. Failing to respond to consumers' inquiries in a timely manner or at all.

34. Each unconscionable commercial practice by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2, et seq.

COUNT II

VIOLATIONS OF THE CFA BY RESPONDENTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)

35. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 34 above as if more fully set forth herein.

36. In the operation of their home improvement business, Respondents have made false promises and/or misrepresentations including, but not limited to, the following:

- a. Misrepresenting that they would obtain the requisite permits for the home improvement work they had contracted to perform;
- b. Misrepresenting, after acknowledging they had performed substandard work, that they would return to make repairs;
- c. Misrepresenting that they would pay the costs associated with damage caused as a result of substandard work they had performed;
- d. Misrepresenting that they would provide consumers with refunds;
- e. Misrepresenting that the home improvement work they were to perform would pass the requisite inspection;
- f. Misrepresenting that sufficient funds existed or would exist to cover a check they issued to consumers; and
- g. Misrepresenting that consumers would receive a one (1) year warranty on parts and labor for the home improvement work to be performed.

37. In the operation of their home improvement business, Respondents have engaged in knowing omissions of material fact including, but not limited to, the following:

- a. Failing to include in home improvement contracts the date or time period within which work was to commence;
- b. Failing to include in home improvement contracts the date or time period within which work will be completed;
- c. Failing to obtain the requisite building and/or construction permits to perform the home improvement work;
- d. Failing to include in a home improvement contract a complete and accurate description of the products and materials to be used; and
- e. Failing to include in home improvement contracts the signatures of the consumers.

38. Each false promise, misrepresentation and/or knowing omission of material fact by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2, et seq.

COUNT III

VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENTS

39. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 38 above as if more fully set forth herein.

40. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq., (“Home Improvement Regulations”), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller connected with the sale, advertisement or performance of home improvement contracts.

41. Respondents are “seller[s]” within the definition of N.J.A.C. 13:45A-16.1.

42. At all relevant times, Respondents entered into “home improvement contracts” within the definition of N.J.A.C. 13:45A-16.1.

43. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

7. Performance:

- iii. Fail to give timely written notice to the buyer of reasons beyond the seller’s control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7)(iii).]

44. The Home Improvement Regulations further require sellers to ensure that all applicable permits have been obtained before they begin work as follows:

10. Building Permits

- i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances....

[N.J.A.C. 13:45a-16.2(a)(10)(i).]

45. Moreover, the Home Improvement Regulations requires contracts exceeding \$200.00

to be in writing, and provide, in pertinent part:

12. Home Improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes to the terms and conditions thereof, shall be signed by all parties thereto, and shall be clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

....

- ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction material to be used.

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

[N.J.A.C. 13:45A-16.2(a)(12)(ii), (iv).]

46. Respondents have violated the Home Improvement Regulations by engaging in certain conduct, including, but not limited to, the following:

- a. Failing to provide a consumer with timely written notice of a delay in the commencement of home improvement work;

- b. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence.
- c. Failing to include in home improvement contracts the dates or time period on or within which the work is to be completed;
- d. Commencing home improvement work before all requisite building and construction permits had been issued;
- e. Failing to include in home improvement contracts a description of the principal products and materials to be used or installed; and
- f. Failing to include in home improvement contracts the signature of the consumers.

47. Respondents' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Petitioner respectfully requests the entry of an Order after a hearing as authorized by the CFA, N.J.S.A. 56:8-3.1:

- (a) Finding that the acts and omissions of Respondents constitutes multiple instances of unlawful practices in violations of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Respondents and its owners, agents, employees and representatives and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Respondents to restore any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (d) Assessing the maximum statutory civil penalties against Respondents for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against Respondents for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interest of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By: _____

Jonathan D. Rudolph
Deputy Attorney General

Dated: October 31, 2005
Newark, New Jersey

PETER C. HARVEY
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Attorney for Petitioner

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Division of Consumer Affairs

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
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Docket No.: 05-011

PETER C. HARVEY, Attorney General of
the State of New Jersey,

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MASTER MECHANICAL
CORPORATION a/k/a MASTER
EXCAVATION MECHANICAL CORP.
and ADAM NELAJ,

Respondents.

Administrative Action

NOTICE OF HEARING AND
NOTICE TO FILE ANSWER

TO: Master Mechanical Corporation (a/k/a Master Excavation Mechanical Corp.)
590 Bloomfield Avenue
Suite 375
Bloomfield, New Jersey 07003.

Adam Nelaj
15 Orchard Street
Bloomfield, New Jersey 07003.

This Notice of Hearing and Notice to File Answer (also referred to as "Notice") will advise you that a Complaint (copy attached) has been made to the New Jersey State Division of Consumer Affairs (the "Division") to consider violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq., by

Master Mechanical Corporation (a/k/a Master Excavation Mechanical Corporation) and Adam Nelaj, ("Respondents"). The Division has been granted the authority to consider this Complaint by N.J.S.A. 56:8-3.1 and other related laws and administrative regulations. The Division requires you to file an Answer to the allegations in the Complaint within twenty (20) days from the service of the Complaint. You may mail your answer to the Division at the address listed at the end of this Notice.

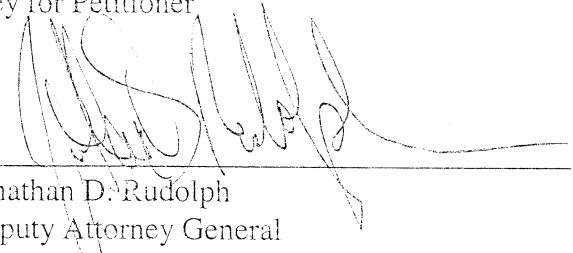
Your Answer should admit or deny each and every allegation in the numbered paragraphs of the Complaint. If you deny only a part of an allegation, then you shall specify as much of it as is true and shall deny only the remainder. If you are without knowledge or information sufficient to answer an allegation, then you shall so state. Any explanations or affirmative defenses you may have to the allegations should be set forth in a separate statement.

A hearing in this case will not be necessary if you admit that the allegations in the Complaint are true, or without admitting the truth of the allegations, you state that you will not contest the charges. Your case will then be presented to the Division for final determination of any penalty. You will have the opportunity to appear at a brief hearing to offer written material or to make an oral presentation to the Division to mitigate of the penalty to be imposed. The Division then will determine what penalty shall be imposed. The Division also will consider the amount of investigative costs and monetary penalties, if any, which may be assessed.

A denial of the allegations in the Complaint will result in a formal hearing being conducted at a date, time and place to be determined by the Division, which will give you notice when it will hear the Complaint. The Division also may, in its discretion, transfer the case to the Office of Administrative Law for a hearing before an Administrative Law Judge. Adjournments will not be granted except upon timely written application to the Division showing good cause. Any expenses incurred as a result of adjournments may be assessed to you at the end of the case. You may appear at the hearing in person, by attorney or both. You will be afforded an opportunity to make a defense to any of the charges.

Failure to respond to this Notice of Hearing and Notice to File Answer, or failure to appear when notified, will result in the matter being considered and decided in your absence. A decision rendered by the Division may affect your legal rights.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By: 
Jonathan D. Rudolph
Deputy Attorney General

Dated: October 31, 2005
Newark, New Jersey

KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF ALL CORRESPONDENCE TO:

Robert Russo, Director of Adjudication and Mediation Services
New Jersey Division of Consumer Affairs
Office of Consumer Protection
124 Halsey Street - 7th Floor
P.O. Box 45024
Newark, New Jersey 07101
(973) 504-6224

WITH A COPY TO:

Stanley Fischer, Executive Director
New Jersey Division of Consumer Affairs
Office of Consumer Protection
124 Halsey Street - 7th Floor
P.O. Box 45024
Newark, New Jersey 07101
(973) 504-6335

WITH A COPY TO:

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